

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1 Amy E. Vulpio (No. 020581999) White and Williams LLP 1650 Market Street, Suite 1800 Philadelphia, PA 19103 Telephone: (215) 864-6250 vulpioa@whiteandwilliams.com <i>Attorneys for Google LLC</i>	
In re: BED BATH & BEYOND INC., et al., Debtors.¹	Chapter 11 Case No. 23-13359 (VFP) Jointly Administered

**LIMITED OBJECTION AND RESERVATION OF RIGHTS
OF GOOGLE LLC TO AMENDED JOINT CHAPTER 11 PLAN
OF BED BATH & BEYOND INC. AND ITS DEBTOR AFFILIATES**

Google LLC (“**Google**”), by and through its undersigned counsel, files the following limited objection and reservation of rights to the Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and its Debtor Affiliates [Docket No. 1712] (the “**Plan**”),² filed by the above-captioned debtors and debtors-in-possession (collectively, “**Debtors**”) and states as follows:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Plan.

BACKGROUND

1. On April 23, 2023 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for Chapter 11 relief in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”).

2. Before and after the Petition Date, Google provided services to and for the benefit of Bed Bath & Beyond Inc. and possibly other Debtors pursuant to one or more Google Advertising Services Agreements (collectively, the “**ASA**”) and possibly one or more other contracts (collectively with the ASA, the “**Contracts**”). The ASA is a click-to-accept agreement that incorporates Google’s Advertising Program Terms (the “**Terms and Conditions**”).

3. The Google Ads program, formerly known as AdWords, is an online advertising program that, among other things, allows advertisers to reach potential customers as they search the web or browse websites. The Google Ads program enables advertisers to set a budget for advertising and control their ad traffic and targeting decisions

4. On July 7, 2023, Google filed a timely proof of claim in Bed Bath & Beyond, Inc.’s bankruptcy case, which was designated Claim No. 12948 (the “**Google Claim**”). As more fully set forth on the account statement attached to the Google Claim, Google’s records reflect that, as of the Petition Date, a balance of \$294,567.34 was owed by Bed Bath & Beyond Inc. to Google. As such, Google is the Holder of a General Unsecured Claim under the Plan. *See* Plan §§ I.A.77 and 79. Additional amounts may continue to accrue to the extent not paid by the Debtors in the ordinary course.

5. On August 1, 2023, Debtors filed the Plan accompanied by an Amended Disclosure Statement Relating to the Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and its Debtor Affiliates [Docket No. 1713] (the “**Disclosure Statement**”). The Disclosure

Statement states that “Holders of General Unsecured Claims that vote to accept the Plan shall be deemed a Released Party for all purposes under the Plan.” *See* Disclosure Statement at 13.

6. The Plan defines “Released Party” as follows:

“Released Party” means each of the following, solely in its capacity as such: (a) the ABL Lenders; (b) the Predecessor ABL Agent; (c) the Creditors’ Committee; (d) the Retained Professionals; and (e) with respect to each of the foregoing entities in clauses (a) through (d), each such Entity’s current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, control persons, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, participants, managed accounts or funds, fund advisors, predecessors, successors, assigns, subsidiaries, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, investment managers, and other professionals, each in their capacity as such; and (f) the D&O Parties; provided that no party, including a D&O Party, shall be a Released Party with respect to any Non-Released Claims. Notwithstanding anything to the contrary herein, (i) the Debtors do not release the D&O Parties, and (ii) the term “Released Party” does not include: (a) the Debtors or the Wind-Down Debtors; (b) the DIP Agent; (c) the DIP Lenders; (d) the ABL Agent; (e) the FILO Lenders; or (f) the FILO Agent.

See Plan § I.A.129.

7. Accordingly, the Plan’s definition of “Released Party” does not expressly include Holders of General Unsecured Claims that vote to accept the Plan, notwithstanding the representation in the Disclosure Statement that “Holders of General Unsecured Claims that vote to accept the Plan shall be deemed a Released Party for all purposes under the Plan.” *See* Disclosure Statement at 13. Nor does this critical concept appear to be reflected elsewhere in the Plan.

8. On August 2, 2023, the Bankruptcy Court entered *Order (I) (A) Conditionally Approving The Adequacy Of The Disclosure Statement, (B) Approving The Solicitation And Notice Procedures With Respect To Confirmation Of The Plan, (C) Approving The Forms Of Ballots And Notices In Connection Therewith, (D) Scheduling A Combined Disclosure Statement*

Approval And Plan Confirmation Hearing And Certain Dates And Deadlines With Respect Thereto, And (E) Granting Related Relief, And (II) (A) Extending The Debtors' Exclusive Periods To File A Chapter 11 Plan And Solicit Acceptances Thereof Pursuant To Section 1121 Of The Bankruptcy Code And (B) Granting Related Relief [Docket No. 1716], which sets a Plan Supplement Filing Deadline fourteen (14) days prior to the Plan Voting Deadline, i.e., 14 days before September 1, 2023. However, as of the Plan Voting Deadline, the Plan Supplement has not been filed. Insofar as the Plan Supplement is supposed to include a Schedule of Assumed Executory Contracts and Unexpired Leases, *see* Plan § I.A.132, Google cannot determine whether Debtors contemplate the assumption of any of the Contracts.

9. The Plan further provides that “[t]he Debtors preserve the Causes of Action (including all Non-Released Claims) notwithstanding the assumption or rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan.” *See* Plan § IV.F.7.

RESPONSE

10. Google has voted to accept the Plan based upon the representation in the Disclosure Statement that “Holders of General Unsecured Claims that vote to accept the Plan shall be deemed a Released Party for all purposes under the Plan.” *See* Disclosure Statement at 13. Google respectfully requests that the Confirmation Order include language consistent with the Disclosure Statement in this regard.

11. Under Section 365(b)(1) of the Bankruptcy Code, a contract may be assumed as an executory contract only if the debtor, at the time of such assumption, cures or provides adequate assurance that the debtor will promptly cure outstanding defaults. As such, any such

assumption must be conditioned on the payment of the appropriate cure amounts (i.e., \$294,567.34).

12. Moreover, to the extent that the Contracts are assumed, Google reserves the right to argue that such assumption provides a defense to any Preference Actions against Google notwithstanding the language at Plan § IV.F.7 (regardless of whether Google is deemed a Released Party under the Plan).

RESERVATION OF RIGHTS

13. Google reserves the right to amend its ballot and change its vote on the Plan of it is not deemed a “Released Party.” Google reserves its right to supplement and/or amend this limited objection and to introduce evidence at any hearing related to the Plan, the assumption of the Contracts, and/or this limited objection.

WHEREFORE, Google respectfully requests that this Honorable Court (a) clarify in the Confirmation Order that, as represented in the Disclosure Statement, “Holders of General Unsecured Claims that vote to accept the Plan shall be deemed a Released Party for all purposes under the Plan”; (b) deny assumption of any Contracts in the absence of Debtors’ confirmation that they will cure the outstanding amounts due and owing to Google in connection therewith; and (c) provide such further relief as this court deems just and proper.

Dated: September 1, 2023

WHITE AND WILLIAMS LLP

/s/ Amy E. Vulpio

Amy E. Vulpio (No. 020581999)

Counsel to Google LLC

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
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CERTIFICATE OF SERVICE

I, Amy E. Vulpio, hereby certify that a true and correct copy of the foregoing *Limited Objection And Reservation Of Rights Of Google LLC To Amended Joint Chapter 11 Plan Of Bed Bath & Beyond Inc. And Its Debtor Affiliates* was filed electronically with the Bankruptcy Court on September 1, 2023. Notice of this filing will be sent today to all parties via the Court's electronic filing system.

Dated: September 1, 2023

WHITE AND WILLIAMS LLP

/s/ Amy E. Vulpio
Amy E. Vulpio (No. 020581999)
Counsel to Google LLC

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.